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Supreme Court, U.S.
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No. _____

In The

Supreme Court of the United States

MORRIS RONALD GOULD a/k/a RONALD GOULD,

Petitioner,

v.

FLORIDA BAR, JOHN F. HARKNESS, JR., EXECUTIVE DIRECTOR, FLORIDA BAR, JACQUELYN P. NEEDELMAN, FLORIDA BAR COUNSEL, BARBARA PARIENTE, CHIEF JUSTICE OF THE SUPREME COURT OF FLORIDA,

Respondents.

On Petition For A Writ Of Certiorari To The United States Court Of Appeals For The Eleventh Circuit

PETITION FOR A WRIT OF CERTIORARI

MORRIS RONALD GOULD, Pro Se
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QUESTIONS PRESENTED

1. Is it a violation of Petitioner's and Florida consumers' First and Fourteenth Amendment rights for the Bar to totally ban Petitioner's advertisement "New York Legal Matters Only. M. Ronald Gould Licensed New York Attorney 1201 Brickell Avenue, Ste. 630 Miami, Florida 33131. Free phone consultation 305 865-2962" because the Bar holds, that pursuant to the advertisement, it is the "unlicensed practice of law" if consultations take place at a person-to-person meeting at Petitioner's Miami office?

2. Should the *Central Hudson Gas & Elect. Co. v. Public Service Comm'n* holding apply to lawful and truthful attorney's advertised offering of legal services where those legal services are a direct benefit to the general public?

3. Does the Eleventh Circuit's decision conflict with the Third Circuit's holding in *Surrick v. Killion*?

4. Does the Eleventh Circuit's decision obstruct Petitioner's and all other lawyers federal license to practice before federal administrative agencies and conflict with federal law and policy?

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PETITION FOR A WRIT OF CERTIORARI

Gould petitions for a writ of certiorari to review the judgment of the United States Court of Appeals for the Eleventh Circuit.

OPINIONS BELOW

The Court of Appeals' opinion (App. 1-6) is an unpublished opinion. The district court's opinion (7-16) is unpublished.

JURISDICTION

The judgment of the court of appeals was entered on December 12th, 2007. This Court has jurisdiction under 28 U.S.C. § 1254(1).

STATUTORY PROVISIONS INVOLVED

The United States Constitution First Amendment and Fourteenth Amendment. The Administrative Procedure Act, 5 U.S.C. §§ 500, 500(b). United States Code, 28 U.S.C. § 2343. R. Regulating the Florida Bar, 3-4.1, 4-5.5(b), 4-5.5(c)(4), 10-2.1, 10-2.1(a), App. 25-29.

STATEMENT

BACKGROUND - THIS CASE

Petitioners original charges were that the Respondents had violated and are violating his federal constitutional rights as they apply to him: 1) the equal protection clause of the Fourteenth Amendment; 2) the First Amendment; 3) the Full Faith and Credit Clause in Article IV, § 1; 4) the Commerce Clause in Article 1, § 8, Clause 3; 5) violations of 42 U.S.C. § 1983; and 6) 42 U.S.C. § 1988.

> "First Amendment, Congress shall make no law respecting an establishment of religion, or prohibiting the free exercise thereof; or abridging the freedom of speech, or of the press; or the right of the people peaceably to assemble, and to petition the Government for a redress of grievances."

> "Fourteenth Amendment, Section 1. All persons born or naturalized in the United States and subject to the jurisdiction thereof, are citizens of the United States and of the State wherein they reside. No State shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; nor shall any State deprive of any person of life, liberty, or property, without due process of law; nor deny to any person within its jurisdiction the equal protection of the law."

On December 20, 2004. Petitioner filed a fourteen count Complaint for declaratory and injunctive relief

relying on 28 U.S.C. §§ 1331, 2201, and 2202 for jurisdiction. Petitioner brought this action charging the unlicensed practice of law (UPL) rules as applied to Petitioner violated his constitutional rights. Pursuant to a 12(b)(6) motion, 11 counts were dismissed and one count dealing with a disclaimer was mooted out because Petitioner was already using the disclaimer "Admitted New York Bar Only," leaving only two counts, both of which allege violations by the Florida Bar of Petitioner's First Amendment rights as applied to Petitioner.

Motions for Summary Judgments and cross motions were filed under Fed. R. 56 relating to the two remaining First Amendment issues, which were decided by the district court on August 8, 2006 granting a final order of Summary Judgment for the Bar and denying Petitioner's motion.

The Eleventh Circuit held that Petitioner's advertisement "NEW YORK LEGAL MATTERS ONLY, M. RONALD GOULD LICENSED NEW YORK ATTORNEY 1201 BRICKELL AVENUE, STE. 630, MIAMI, FLORIDA 33131 FREE PHONE CONSULTATION 305 865 2962" concerns unlawful and untruthful activity. It is the unauthorized practice of law (UPL) because Gould, though licensed in New York, is not licensed in Florida. *See* Fla. Stat. § 454.23 (2004), App. 4, R. Regulating the Florida Bar 4-5.5(b), App. 1-6, R. Regulating the Florida Bar 10-2.1, R. 10-2.1(a), App. 1-6, provides that any person not admitted to the Florida Bar may not practice law in Florida. A person not admitted to the Florida Bar may not

open a law office to practice law, unless authorized by another law.

The Eleventh Circuit's opinion also found that Petitioner's advertisement "Practice Limited to Federal Administrative Law call M. Ronald Gould, Licensed New York Attorney, 1201 Brickell Avenue, Ste. 630, Miami, Florida 33131 Free Phone Consultation 305 865 2962" "is misleading and relates, at least in part, to unlawful conduct. Not protected by the First Amendment and is subject to regulation by the Florida Bar."

The Circuit Court gave as its reason for the advertisement to be unlawful is that "The words 'federal administrative law' apply to a broad range of legal issues, and are not limited to the representations of persons before federal agencies. Issues of federal administrative law arise in state and federal courts, as well, as before federal agencies."

ARGUMENT

REASONS FOR GRANTING THE PETITION

1. **It will provide for the delivery of legal services, not now available, to consumers living in Florida who have legal problems arising in New York. It will allow licensed attorneys from New York to establish offices in Florida so that the advice and representations regarding New York law will be cost effective and convenient to the public.**

2. **The Eleventh Circuit's decision is in conflict with the Third Circuit's holding in *Surrick v. Killion*, 449 F.3d 520 (3d Cir. 2006), by improperly restricting a lawyer's federal license to practice before federal administrative agencies. Failure to resolve the conflict; the Eleventh Circuit's decision may be a basis to prohibit lawyers licensed in one jurisdiction from practicing before federal administrative agencies located in a jurisdiction from which the lawyer is not licensed.**

3. **The Eleventh Circuit's decision is in conflict with the Administrative Procedure Act (APA), 5 U.S.C. § 500(b) which is the exclusive authority governing lawyers' right to appear before federal administrative agencies.**

1. IT IS A VIOLATION OF PETITIONER'S AND FLORIDA CONSUMERS' FIRST AND FOURTEENTH AMENDMENT RIGHTS FOR THE BAR TO TOTALLY BAN PETITIONER'S ADVERTISEMENT

A. Florida Consumers Are Unnamed Petitioners

Petitioner in bringing this cause of action in the United States District Court and through the appeal process to the Eleventh Circuit has maintained Petitioner is a proper party to advocate the First Amendment rights of consumers. *See Broadrick v. Oklahoma*, 413 U.S. 601, 612 (1973), *Secretary of State of Maryland v. Joseph H. Munson Co.*, 467 U.S. 947, 956 (1984), *Eisenstadt v. Baird*, 405 U.S. 438, 445 n.5 (1972) and *Carey v. Population Services International*, 431 U.S. 678 (1977).

This case concerns the relationship between the Petitioner and Florida consumers where the First Amendment rights of both are dependent on each other. Petitioner has the right to advertise his offer of New York legal services, and the consumers have the right to read and effectively obtain the consultations and representation on a cost effective basis at a Florida location convenient to the consumer. One without the other defeats the First Amendment rights of both.

The Petitioner and the consumers are attacking the UPL rules as applied to them. Specifically, it is the UPL rules which prevent the Petitioner from

offering New York legal services from Petitioner's Miami office. And indirectly, but in a very practical way, consumers are deprived of those legal services because they are not able to meet with Petitioner in Florida. These UPL rules violate consumers' right to assemble. UPL rules prohibit them from receiving consultations and the preparation of legal documents, much of which would involve litigation in the New York State Courts and directly burdens consumers' right to petition the government for a redress of grievances. Access to New York Courts cannot be accomplished without the assistance of a New York lawyer.

B. Florida Consumers' First And Fourteenth Amendment Rights Are Fundamental And Deserving Of Strict Scrutiny Standard Of Review

The consumers' freedom of speech is dependent on their right to assemble (with Petitioner) and their right to access the courts (need for legal assistance). When these rights in the aggregate are violated by the Bars' use of the UPL rules denying the consumers their choice of counsel, these rights are elevated to fundamental rights separate and apart from the Petitioner's commercial speech rights. "A state could not, by invoking the power to regulate the professional conduct of attorneys, infringe in any way the right of individuals and the public to be fairly represented in lawsuits authorized by Congress to effectuate a basic public interest." *Brotherhood of Railroad*

Trainmen v. Virginia ex rel. Virginia State Bar, 377 U.S. 1 (1964).

Thomas v. Collins, 323 U.S. 516 (1945) upheld the right of private parties to free speech, assemble and to petition for a redress of a grievance. This Court at p. 530:

> It was not by accident or coincidence that the rights to freedom in speech and press were coupled in a single guaranty with the rights of the people peaceable to assemble and to petition for redress of grievances. All these, though not identical, are inseparable. They are cognate rights (citation omitted) and therefore are united in the First Articles assurance. CF. 1 Annals of Congress 759-760.

The "right of the people to petition the government for a redress of grievances" was recently addressed by Justice O'Connor writing for the Court in *BE & K Construction Co. v. NLRB*, 536 U.S. 516 (2002) at pp. 524-525:

> The First Amendment provides, in relevant part, that "Congress shall make no law . . . abridging . . . the right of the people . . . to petition the Government for a redress of grievances." We have recognized this right to petition as one of the most precious of "the liberties safe guarded by the Bill of Rights," [*United*] *Mine Workers* [*of America*] *v. Illinois State Bar Association*, 389 U.S. 217, 222 (1967), and have explained that the right is implied by the very idea of a government,

republican in form, *United States v. Cruikshank*, 92 U.S. 542, 552 (1876).

The "right of the people" applies to individuals just as it applies to unions, *United Mine Workers, id.*, social action groups, *Roberts v. United States Jaycees*, 468 U.S. 609 (1983), political action groups, *NAACP v. Button*, 371 U.S. 415 (1963), and to corporations, *BE & K Construction Co., id., California Motor Transport Co. v. Tracking Unlimited*, 404 U.S. 508, 511 (1972); *Roberts, id.*, at p. 618:

> In another set of decisions, the Court, has recognized a right to associate for the purpose of engaging in those activities protected by the First Amendment-speech, assembly, petition for the redress of grievances, and the exercise of religion. The constitution guarantees freedom of association of this kind as an indispensable means of preserving other individual liberties.

The American Bar Association's ABA Journal of December 2005 at p. 6, President's Message, "COURT ACCESS SHOULD NOT BE RATIONED," President Michael Greco commented as follows: App. 32 A.R. doc. 52, p. 38:

> No one in our nation should have to go to court unassisted when facing a problem that could result in loss of shelter, family dissolution or serious adverse health consequences. Americans should not be subject to grievous harm at the hands of a legal system that they cannot navigate or even understand

> on their own. If we are to meet the goal of equal justice for all, such critically important legal assistance cannot be rationed by the teaspoonful. Nor should it be subject to long waiting lists, limited capacity and narrow legal aid priority lists that increasingly are based on a triage approach. The importance of insuring access to legal services and to justice for the most vulnerable in a democratic society cannot be overstated. The ability of an individual to address civil legal needs with the help of a lawyer can make the difference between stability and poverty, between hope and despair.

Zauderer v. Office of Disciplinary Counsel, 471 U.S. 626 (1985) at p. 643.

> Justice White, writing for the majority:
>
> Over the course of centuries, our society has settled upon civil litigation as a means for redressing grievances, resolving disputes, and vindicating rights when other means fail. We cannot accept the notion that it is always better for a person to suffer a wrong silently than to redress it by legal action. *Bates v. State Bar of Arizona*, 433 U.S. at 376.
>
> That our citizens have access to their civil courts is not an evil to be regretted; rather, it is an attribute of our system of justice in which we ought to take pride. The State is not entitled to interfere with that access by

denying its citizens accurate information about their legal rights.

The Bar's UPL rules deny the consumer their First Amendment right because they cannot take advantage of the offer of legal services which are lawful and truthful. It is of the utmost importance that the consumers receive the legal services out of the Miami office because it is the most cost effective delivery of legal services. Attorney advertising not only provides information about legal services to lower-income families but also provides greater access by reducing fees. The Federal Trade Commission's 1984 study found that the types of civil legal services most likely to be needed by lower-income households cost 5 to 13 percent more in states with restrictive attorney advertising rules than in states with liberal rules. *See* FTC, Cleveland Regional Office and Bureau of Economics, Report of the Staff to the FTC, "Improving Consumer Access to Legal Services: The Case for Removing Restrictions on Truthful Advertising" 77-117 (Nov. 1984).

The UPL prohibits consumers from meeting with Petitioner in Florida to consult on New York legal matters. *See* Fla. Bar Rule R. 4-5.5. This translates into a denial of their choice of counsel, and to the right of access to New York Courts. Access to the courts is a fundamental right which requires strict scrutiny as the standard of review.

C. Attorney's Offer Of Legal Assistance "Deserves The Strongest Protection Our Constitution Has To Offer"

From *Bates v. State Bar of Arizona*, 433 U.S. 350 (1977) at p. 376; *Zauderer v. Office of Disciplinary Counsel*, 471 U.S. 626 at 643 (1985) and to the *Florida Bar v. Went For It, Inc.*, 515 U.S. 618 (1995), this Court has consistently held that attorney advertising is commercial speech though having some measure of First Amendment protection but not deserving of full protection.

Advertising is the most informative method of communication. It has provided commercial speech which helps millions of people every day to avoid products which have been declared or suggested are not safe. It announces to the public with certain illnesses that they may be selected to participate in controlled trials for medications to cure or reduce the effects of certain medical conditions. Announcements that free trials are being conducted in the name of preventive medicine is an everyday occurrence.

Lawyers advertise every day announcing that products are under investigation or have been determined to cause illnesses or are unsafe and providing the phone numbers to consumers for more information on their legal rights. This type of information is not normally available to the public. These messages are beyond commercial speech. They inform the public at large of vital information. It's the equivalent of a public service announcement.

Petitioner's offer of New York legal services "deserves the strongest protection our constitution has to offer." Justice O'Connor, *Florida Bar v. Went For It, Inc.,* 515 U.S. 618 at 634 (1995): New York residents move to Florida in unusually large numbers. They may still have family or business ties which do or may require legal assistance. That type of assistance is not available from Florida Bar members who are not admitted to practice in New York. *See* App. 30-31 A.R. doc. 52, p. 36. It is neither convenient nor cost effective for Florida consumers to spend large sums of money on travel to New York to meet with a New York lawyer and which may require a number of occasions. The consumers most likely in need of legal services are blue collar workers who cannot take days off from their employment or retirees on a fixed income who cannot afford extra expense beyond the cost of legal fees. Cost effective legal fees without the added burden of travel expenses will make the difference for many consumers of protecting their legal rights. *See* FTC Report, Cleveland Regional Office Report, *id., VA St. Bd. of Pharm. v. VA Cit. Cons. Council*, 425 U.S. 748 at 754 "that First Amendment interests in the free flow of price information could be found to outweigh the countervailing interests of the States." Providing cost effective legal services is surely as worthy a goal as the price of prescription drugs. The UPL rules should be struck down for it is the rules which prohibit the consumers' right to cost effective and convenient delivery of legal services.

This Court with great concern has separated noncommercial speech from commercial speech for fear that granting full First Amendment protection to commercial speech would dilute noncommercial speech. Noncommercial speech includes talk of religious, social, and political issues. Peaceful demonstrations and picketing charging government with wrongdoing is fully protected. It is these latter areas of First Amendment rights which require expressive conduct and are most in need of protection. For it is this conduct that is most resisted by governmental authority and quite often results in refusals of permits; or physical restraint during demonstrations. It is the citizens' fundamental right to petition the government for a redress of grievances. But lawyers hold the key to the courthouse door.

Justice Kennedy writing the dissenting opinion in *Florida Bar v. Went For It, Inc.*, 515 U.S. 618 at 636 (1995):

> Attorneys who communicate their willingness to assist potential clients are engaged in speech protected by the 1st and 14th Amend. That principle has been understood since *Bates v. State Bar of Arizona*, 433 U.S. 350 (1977).

Justice Kennedy continues at p. 636:

> a preliminary observation is in order. Speech has the capacity to convey complex substances, yielding various insights and interpretations depending upon the identity of the listener or the reader and the context of its

> transmission. It would oversimplify to say that what we consider here is commercial speech and nothing more, for in many instances the banned communication may be vital to the recipients right to petition the courts for a redress of grievances. The complex nature of expression is one reason why even so-called commercial speech has become an essential part of the public discourse the 1st Amend. secures. If our commercial speech rule are to control this case then it is imperative to apply them with exacting care and fidelity to our precedents, for what is at stake is the suppression of information and knowledge that transcends the financial self-interest of the speaker.

Jusice O'Connor writing the majority opinion, *id.*, at p 634 (dictum):

> Spech by professionals obviously has many dimensions. There are circumstances in which we will accord speech by attorneys on public issues and matters of legal representation the strongest protection our constitution has to offer.

(Citations omitted.)

The attorneys' commercial speech cases that have come before this Court can for the most part, be separated into two classifications. The following cases relate to the lawyers advertising some kind of designation to impress the public. *Peel v. Atty. Registration and Disipline Comm. of Illinois*, 496 U.S. 91 (1990), upheld specialty certification, *Ibanez v. Florida Dep't of*

Professional Regulation, 114 S.Ct. 2084 (1994) allowing multiple certificates and licenses to appear on their letterhead, *Edenfield v. Fane*, 113 S.Ct. 1792 (1993), upheld the right of accountants to solicit business on a person-to-person basis because the accountants brought important financial information to business people. This Court struck down on First Amendment challenges most, if not all, of the different rules of professional conduct which totally banned speech on the grounds that the Bar failed to comply with *Central Hudson Gas & Elect. v. Public Service Comm'n*, 447 U.S. 557 (1980). These cases related to speech alone and were not coupled with any of the other First Amendment rights.

United Transportation Union v. State Bar of Michigan, 401 U.S. 576 (1991), striking down rules of ethical conduct which burdened the right to petition; *Zauderer v. Office of Disciplinary Counsel*, 471 U.S. 626 (1985), advertising to the public that there is evidence that the Dalkon Shield has caused injury and that a claim must he filed by a certain date; *NAACP v. Button*, 371 U.S. 415 (1963), offer to represent black citizens to gain certain political rights; *United Mineworkers of America v. Illinois State Bar Association*, 389 U.S. 217 (1967), providing attorneys who will represent union members for accident claims where the legal fees are cost effective; *BE & K Construction Co. v. NLRB*, 536 U.S. 516 (2002), the right of a corporation to petition the government for a redress of a grievance; *Roberts v. United States Jaycees*, 468 U.S. 609 (1983), right of association. The

common denominator of these cases is that they all involved commercial speech and one or more other First Amendment rights. In each of these cases it is the public's right of access to the courts which was of paramount importance.

Brotherhood of Railroad Trainmen v. Virginia, ex rel. Virginia Bar, 377 U.S. 1 (1964), "A state could not, by invoking the power to regulate the professional conduct of attorneys, infringe in any way the right of individuals and the public to be fairly represented in lawsuits authorized by Congress to effectuate a basic public interest."

The First Amendment is binding on the states by application of the Fourteenth Amendment. A "citizens right to petition the government for a redress of grievances" is not limited to suits against the United States but includes lawsuits against the State of New York.

Zauderer, id., at 643, Justice White referencing to the public's access to the courts: "The State is not entitled to interfere with that access by denying its citizens accurate information about their legal rights."

Upon the founding of the Republic our government established the judiciary, of which the courts are involved in the daily life of the public, more so, than any other branch of government. Our court system, by design is so complex that only persons with at least seven years of higher education, tested on some minimal form of knowledge has a chance to

work within the system but not with efficiency or competency. To be competent and efficient you must add a number of years of practical experience of appearing in court.

We have crowned the lawyer as the keeper and defender of the public's rights. Justice Kennedy for the minority stated "that an offer of legal assistance was not merely commercial speech," Justice O'Connor for the majority: "attorney's offer of legal assistance deserves the strongest protection our constitution has to offer." *Florida Bar v. Went For It, Inc., id.* The speech at issue is lawful, truthful and directly serves the public interest. It should be elevated to noncommercial speech.

If not noncommercial speech, then it should be elevated to the most respected position in commercial speech with strict scrutiny as the standard of review.

D. *CENTRAL HUDSON, ID.*, SHOULD NOT APPLY TO PETITIONER'S ADVERTISED OFFER OF LEGAL ASSISTANCE

Central Hudson's holding, *id.*, should not apply because Florida consumers are legal users of New York legal services and New York legal services are lawful and truthful provided that the consumers do not have access to those services from a Florida law office. The Bar wants to keep the consumer in ignorance so that they do not know about the availability of Petitioner's offer of New York legal services or make the legal services unavailable to the public.

44 Liquormart, Inc. v. Rhode Island, 116 S.Ct. 1495 (1996) at p. 1516, Justice Thomas:

> In cases such as this, in which the government's asserted interest is to keep legal users of a product or service ignorant in order to manipulate their choices in the marketplace, the balancing test adopted in *Central Hudson Gas & Elec. Corp. v. Public Service Comm'n of N.Y.*, 447 U.S. 557 (citations omitted) (1980), should not be applied in my view. Rather, such an "interest" is per se illegitimate and can no more justify regulation of "commercial" speech than it can justify regulation of "noncommercial" speech.

E. The State Of Florida Has No Substantial State Interest In Banning The Offer Of New York Legal Services To Consumers From A Florida Law Office

The Florida Bar wrote a letter advising the Petitioner that his advertisement with a New York address is lawful and truthful, "provided that you do not give advice while here in Florida." It is the UPL if the other proposed advertisement with a Miami address is published. App 25-26 A.R. Doc. 52 at pp. 32-33-34. It is not the law Petitioner practices but where he practices the law that is the basis for a UPL. The Bar cannot ban the practice of New York law based on advertisements where the contents are substantially the same except for the Miami office address. The Bar has no problem allowing personal meeting by consumers at Petitioner's New York

address. The Bar finds no fault for Florida consumers to manage their case by phone, fax and e-mail. If the Bar allows Petitioner to obtain Florida consumers as clients, whether accomplished by phone or mail, then it stands to reason that the Bar does not find any harm for Petitioner to give advice on New York law to Florida consumers. *See Florida Bar v. Moses*, 380 So.2d 412 (Fla. 1980) at p. 417.

This Court has stressed the importance to consumers who would be applying for patents that patent agents or lawyers have offices in the area from which their clients reside or have an office. *Sperry v. The Florida Bar*, 373 U.S. 379 (1963) at pp. 384-385:

> The bulk of practitioners are now scattered throughout the country, and have been so distributed for many years. As a practical matter, if practitioners were not so located, and thus could not easily consult with the inventors with whom they deal, their effectiveness would often be considerably impaired.

Recently the Third Circuit in *Surrick v. Killion*, 449 F.3d 520 (2006) at p. 533, dealt with the same issue, and *citing Sperry*, *id.*:

> Accordingly, the question is not whether any federal law expressly confers the right to maintain an office, but whether the maintenance of an office is "reasonably within the scope" of the federally-conferred license to practice law. *Id.* at 402 n. 47, 83 S.Ct. 1322.
>
> . . . we agree with the District Court that maintaining a law office is "reasonably

> within the scope of the practice authorized" by 28 U.S.C. sections 1654 & 2071 and the local rules and that the state's regulation of such conduct hinders Surrick's federal license to practice law.

Here, the District Court heard expert testimony on the ability of an attorney to practice law without a physical office and concluded that:

> . . . despite technological advances in the practice of law – such as electronic filing and case research through Internet subscriptions – physical space remains necessary for the representation of clients. A physical office space provides a location for confidential counseling with clients as well as room to store the necessary equipment, such as fax machines, legal texts, telephones, paper files, typewriters and computers, association with proper management of legal maters [sic]. Without a physical office location the plaintiff would be effectively prohibited from "performing those tasks which are incident to" litigating cases before the Eastern District.
>
> We agree with these findings. As both a practical and historical matter, the maintenance of a law office is incidental to the practice of law. Although there is no precise formula for determining when a state regulation goes too far in burdening federal goals, *see NW Cent. Pipeline Corp. v. State Corp. Comm'n of Kansas*, 489 U.S. 493, 515-519 (observing that some burden on federal goals does not result in preemption), the direct effect of a state

> regulation (fn.5) prohibiting an attorney from maintaining a law office is the frustration of his or her ability to practice before a federal court. Accordingly, we respectfully disagree with the Pennsylvania Supreme Court, and conclude that the Eastern District of Pennsylvania's power to determine who may practice law before it preempts Pennsylvania law barring an unlicensed attorney from maintaining a law office.

We are not dealing with a federal license as in the above cases. We are dealing with the consumers' right to have legal services at the place most cost effective and convenient to where the consumers live. This consumer concern overrides the Bar's UPL. The UPL serves no substantial state interest because once the practice of New York law is conceded to be lawful and truthful it becomes unreasonable and protectionist to bar it from the Miami office:

> *In re Amendments To The Rules Regulating The Florida Bar And the Florida Rules of Judicial Administration*, 907 So.2d 1138 (Fla. 2005) at pp. 1156-1157 "(c)(4) Authorized Temporary Practice by Lawyers Admitted in Another United States Jurisdiction, (A) are performed for a client who resides in or has an office in the jurisdiction in which the lawyer is authorized to practice or (B) arise out of or are reasonably related to the lawyers practice in a jurisdiction in which the lawyer is admitted to practice." App. 17-18-19 Exemption from the UPL. *See* R. 4-5.5(c)(4).

Ch. 16, R. Regulating Fla. Bar 16-1.1 "Purpose" Foreign legal consultancy rule. (FLC) App. 24:

> The purpose of this chapter is to permit a person who is admitted to practice in a foreign country as an attorney, counselor at law, or the equivalent to act as a foreign legal consultant in the state of Florida. This chapter authorizes an attorney licensed to practice law in 1 or more foreign countries to be certified by the Supreme Court of Florida, without examination, to render services in this state as a legal consultant regarding the laws of the country in which the attorney is admitted to practice.

Exemption from the UPL rules for foreign lawyers. They are allowed to advertise their availability to provide legal services concerning the country from which they are licensed and such services may be performed from their Miami office. Foreign lawyers have all the rights of free speech, right to assemble, and allows the foreign lawyer to prepare legal documents. Both rules allow sister state and foreign lawyers the right to practice the law of their jurisdiction temporarily and permanently in Florida.

The FLC are allowed to use a public forum to advertise their legal services to the public and meet with consumers at their Florida office. But the UPL denies Petitioner the same forum to advertise his offer of legal services and dispense those services from his Miami office. This type of selectivity is unconstitutional on First Amendment challenges and

has been upheld by this Court. The two advertisements are content based but make an impermissible distinction between the New York and Miami addresses. The offering of legal service is lawful and the consumers are lawful users of the service.

The holding in *Carey, States Attorney of Cook County v. Brown, et al.*, 447 U.S. 455 (1980) at p. 457, Mr. Justice Brennan for the Court:

> At issue in this case is the constitutionality under the First and Fourteenth Amendments of a state statute that generally bars picketing of residences or dwellings, but exempts from its prohibition "the peaceful picketing of a place of employment involved in a labor dispute."

At p. 460:

> Nor can it be seriously disputed that in exempting from its general prohibition only the "peaceful picketing of a place of employment involved in a labor dispute," the Illinois statute discriminates between lawful and unlawful conduct based upon the content of the demonstrator's communication.

At pp. 462-463:

> Any restriction on expressive activity because of its content would completely undercut the "national commitment to the principle that debate on public issues should be uninhibited, robust, and wide-open. *New York Times Co. v. Sullivan*, 376 U.S. 254, 270."

> Necessarily, then, under the Equal Protection Clause, not to mention the First Amendment itself, government may not grant the use of a forum to people whose views it finds acceptable, but deny use to those wishing to express less favored or more controversial views. And it may not select which issues are worth discussing or debating in public facilities. There is a 'equality of status in the field of ideas,' and government must afford all points of view an equal opportunity to be heard. Once a forum is opened up to assembly or speaking by some groups, government may not prohibit others from assembling or speaking on the basis of what they intend to say. Selective exclusion from a public forum may not be based on content alone, and may not be justified by reference to content alone.

The Bar's UPL rules should be struck down, as applied to Petitioner.

Central Hudson Gas & Electric Corp. v. Public Service Commission of New York, 447 U.S. 557 (1980) ("*Central Hudson*") allows the state to regulate (but not totally prohibit) lawful and truthful speech. The state has regulated the conduct of all Florida bar members, sister state and foreign lawyers which satisfies the state interest in protecting the public. *See Florida Bar v. Moses, id.*

In Re Amend. To Rules Regulating Fla. Bar, 907 So.2d 1138 (Fla. 2005) at p. 1153, Rule 3-4.1 NOTICE AND KNOWLEDGE OF RULES; JURISDICTION

OVER ATTORNEYS OF OTHER STATES AND FOREIGN COUNTRIES:

> Every member of the Florida Bar and every attorney of another state or foreign country provides or offers to provide any legal services in this state is within the jurisdiction and subject to the disciplinary authority of this court and its agencies.

If Petitioner practiced New York law out of his Miami office he would be subject to the same rules of conduct that all lawyers are subject to which satisfies the reason for the UPL rules. *See Florida Bar v. Moses*, 10.

Central Hudson, id., provides:

> The four-prong test that any governmental entity must satisfy before it can restrict commercial speech is:
>
> (1) If the communication is neither misleading nor related to unlawful activity, . . .
>
> (2) The government must assert a substantial interest, and the limitations on expression must be designed carefully to achieve the government's goal. Compliance with this requirement may be measured by two criteria:
>
> (3) the restriction must directly advance the state interest involved; the regulation may not be sustained if it provides only ineffective or remote support for the government's purpose;

> (4) if the governmental interest could be served as well by a more limited restriction on commercial speech, the excessive restrictions cannot survive.

The Petitioner's advertisement is lawful, truthful and directly serves the public's interest. The burden is upon the Bar to prove that (1) its interests are substantial; (2) the total ban of providing New York legal services from Petitioner's Miami office advances these interests in a direct and material way; and (3) "the extent of the restriction on protected speech is in reasonable proportion to the interests served, *Edenfield v. Fane, id.*

The Bar has not advanced any reason why the public should be protected from Petitioner's advice on New York law. The second prong has not been satisfied. The Bar by allowing non-Florida Bar members to practice the law of their licensed jurisdictions while residing in Florida renders the UPL rules ineffective and remote, as applied to Petitioner. The Bar has failed to satisfy the third prong. The Bar's regulation of the conduct of all lawyers in Florida has provided the public with protection from Petitioner's offer of legal services. The total ban on Petitioner's advertisement violates the fourth prong. The Bar has not carried its burden required under *Central Hudson, id.*

The Consumers have nowhere to go to obtain New York legal service. Florida lawyers not members of the New York Bar could be found guilty of the UPL

if they offer advice or representation on New York legal matters. App. 30-31 A.R. doc. 52 at p. 36.

The Consumers' right to petition the government for a redress of grievances overrides any substantial state interest and therefore the UPL rules must fall.

2. THE ELEVENTH CIRCUIT COURT OF APPEALS DECISION CONFLICTS WITH THE APA, 5 U.S.C. § 500, *et seq.* AND 28 U.S.C. § 2343

The Eleventh Circuit Court of Appeals held Petitioner's proposed advertisement "Practice Limited to Federal Administrative Law," is misleading at least and relates, at least in part, to unlawful conduct. "The words federal administrative law apply to a broad range of legal issues, and are not limited to the representation of persons before federal agencies. Issues of federal administrative law arise in state and federal courts, as well as before federal agencies." App. 4-6.

Former Chief Justice Rehnquist writing for the majority in *Buckman Co. v. Plaintiffs Legal Committee*, 531 U.S. 341 (2000) at p. 349:

> To the contrary, the relationship between a federal agency and the entity it regulates is inherently federal in character because the relationship originates from, is governed by, and terminates according to federal law. *Cf. Boyle v. United Technologies Corporation*, 487 U.S. 500, 504-506 (allowing preemption

of state law by federal common law where the interests at stake are "uniquely federal" in nature.

A party seeking a benefit or an aggrieved party may only seek relief from the federal agency that has authority over the issues. No person can originate a cause of action for federal agency relief in a state court.

United States Circuit Courts of Appeals have jurisdiction to hear cases from federal administrative agencies when exercising judicial review only from final orders of any administrative agency or where by regulation the agency requires an internal agency review. *See Darby, et al. v. Cisneros, Secretary of Housing and Urban Development, et al.*, 509 U.S. 137 (1993). Petitioner is admitted to the Eleventh Circuit. Petitioner may be admitted to any of the Circuit Courts of Appeals.

Whatever reviewing authority the court has, it is limited to a "review of the whole record or those parts of it cited by a party" *See Darby, id.*

Chapter 158 Federal Agency Orders, 28 U.S.C. § 2343 Venue: "The venue of a proceeding under this chapter is in the judicial circuit in which the petitioner resides or has its principal office, or in the United States Court of Appeals for the District of Columbia Circuit."

The Eleventh Circuit refers to "federal administrative law applies to a broad range of legal issues,"

whatever, those legal issues are they must be raised and resolved within the framework of the federal agencies' regulations during the course of a hearing.

3. THE ELEVENTH CIRCUIT COURT OF APPEALS DECISION CONFLICTS WITH THE THIRD CIRCUIT COURT OF APPEALS DECISION

Petitioner's federal license to practice before federal administrative agencies allows representation even if state law issues are involved. *See Surrick v. Killion*, 449 F.3d 520 (3d Cir. 2006). Surrick, a member of the Circuit Courts Bar, intended to practice before the Eastern District of Pennsylvania representing litigants in diversity cases, though suspended by his regulatory authorities in Pennsylvania. The Court at p. 531: "(State law concerns are the foundation of federal diversity actions)." The court held that under the Supremacy Clause, "when state law conflicts or is incompatible with federal law, the federal law preempts the state law." The Eleventh Circuit Court's holding intrudes on an area solely within the province of federal administrative agencies. *See Sperry v. Florida, id.*; *Surrick v. Killion, id.*; *In Re Desilets*, 9 F.3d 925 (6th Cir. 2002); *Augustine v. Dept. of Veterans Affairs*, 429 F.3d 1334 (Fed. Cir. 2005); 5 U.S.C. § 500(b).

CONCLUSION

The Court is respectfully urged to reverse the decision below, and declare the unlicensed practice of law rules as applied to Petitioner, a violation of Petitioner's and consumers' First Amendment rights.

Respectfully submitted,

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[DO NOT PUBLISH]

IN THE UNITED STATES COURT OF APPEALS

FOR THE ELEVENTH CIRCUIT

No. 06-15142

D. C. Docket No. 04-23178-CV-FAM

MORRIS RONALD GOULD,
a.k.a. Ronald Gould,

Plaintiff-Appellant,

versus

FLORIDA BAR, JOHN F. HARKNESS, JR.,
Executive Director, Florida Bar,
JACQUELYN P. NEEDELMAN,
Florida Bar Counsel,
BARBARA PARIENTE,
Chief Justice of the Supreme Court of Florida,

Defendants-Appellees.

Appeal from the United States District Court
for the Southern District of Florida

(December 12, 2007)

Before ANDERSON and PRYOR, Circuit Judges, and ALBRITTON,* District Judge.

PER CURIAM:

Morris Ronald Gould, an attorney licensed in New York but not in Florida, appeals *pro se* the summary judgment entered in favor of the Florida Bar; John F. Harkness Jr., Executive Director of the Florida Bar; Jacquelyn Plasner Needelman, counsel for the Florida Bar; and Barbara J. Pariente, Chief Justice of the Supreme Court of Florida, and against Gould's complaint for declaratory and injunctive relief based on his "genuine and credible fear" that he would be charged with unauthorized practice of law in violation of his First Amendment right to freedom of speech if he advertised his legal services in Florida. Because Gould's proposed advertisements concern unlawful activity or are misleading, the Florida Bar is entitled to regulate the proposed speech. We affirm.

We review a summary judgment *de novo* and draw all reasonable inferences in favor of the non-moving party. *Boim v. Fulton County Sch. Dist.*, 494 F.3d 978, 982 (11th Cir. 2007). Summary judgment should be granted "if the pleadings, depositions, answers to interrogatories, and admissions on file, together with the affidavits, if any, show that there is no genuine issue as to any material fact and that the

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* Honorable W. Harold Albritton, III, United States District Judge for the Middle District of Alabama, sitting by designation.

moving party is entitled to a judgment as a matter of law." Fed. R. Civ. P. 56(c).

This appeal requires us to address the regulation of two proposed advertisements for the provision of legal services within the State of Florida by an individual not licensed to practice law in the State of Florida. One advertisement relates to the provision of legal services for "NEW YORK LEGAL MATTERS ONLY"; the second advertisement relates to the provision of legal services in the area of "FEDERAL ADMINISTRATIVE LAW." Attorney advertising is commercial speech, which enjoys "a measure of First Amendment protection." *Florida Bar v. Went For It, Inc.*, 515 U.S. 618, 623, 115 S. Ct. 2371, 2375 (1995). Commercial speech that is misleading or concerns unlawful activity, however, is not protected by the First Amendment and may be freely regulated by the government. *Cent. Hudson Gas & Elec. Corp. v. Public Serv. Comm' of N.Y.*, 447 U.S. 557, 563-64, 115 S. Ct. 2343, 2350-51 (1980).

We first address Gould's challenge to the regulation of his proposed advertisement for the provision of legal services relating to New York legal matters from his Florida office. Gould complains that he has a credible fear of prosecution for publishing the following advertisement:

NEW YORK LEGAL MATTERS ONLY
M. RONALD GOULD LICENSED NEW YORK
ATTORNEY 1201 BRICKELL AVENUE, STE. 630
MIAMI, FLORIDA 33131
FREE PHONE CONSULTATION 305 865 2962

The Florida Bar responds that the proposed advertisement concerns unlawful activity.

We agree with the Florida Bar. Under Florida law, it is unlawful for "[a]ny person not licensed or otherwise authorized to practice law in [Florida]" to practice law within the State of Florida. Fla. Stat. § 454.23 (2004). Gould, who is not admitted to the Florida Bar, does not have the authority to practice New York law in Florida. *See* Fla. Stat., R. Regulating the Fla. Bar 4-5.5(b); *Florida Bar v. Rapoport,* 845 So. 2d 874, 877 (Fla. 2003); *Chandris, S.A. v. Yanakakis,* 668 So. 2d 180, 184 (Fla. 1995); *Florida Bar v. Savitt,* 363 So. 2d 559 (Fla. 1978). Because the proposed advertisement concerns unlawful activity, the Florida Bar is entitled to regulate the advertisement. *See Cent. Hudson,* 447 U.S. at 563-64, 100 S. Ct. at 2350.

We next address Gould's challenge to the regulation of his proposed advertisement for legal services "LIMITED TO FEDERAL ADMINISTRATIVE LAW." Gould complains that he has a credible fear of prosecution for publishing the following advertisement:

PRACTICE LIMITED TO
FEDERAL ADMINISTRATIVE LAW
CALL M. RONALD GOULD LICENSED NEW YORK
ATTORNEY 1201 BRICKELL AVENUE, STE. 630
MIAMI, FLORIDA 33131
FREE PHONE CONSULTATION 305 865 2962

The Florida Bar responds that this advertisement also concerns unlawful activity.

Gould argues that he is entitled to practice "federal administrative law" in Florida because a federal statute that amended the Administrative Procedure Act, 5 U.S.C. § 500(b), pre-empts any contrary regulation of the Florida Bar. Section 500(b) provides,

> An individual who is a member in good standing of the bar of the highest court of a State may represent a person before an agency on filing with the agency a written declaration that he is currently qualified as provided by this subsection and is authorized to represent the particular person in whose behalf he acts.

5 U.S.C. § 500(b). Gould contends that Florida cannot forbid him, as "a member in good standing of the bar of the highest court of a State," from representing a person before a federal agency. *See Sperry v. Florida,* 373 U.S. 379, 384-385, 83 S. Ct. 1332, 1325-26 (1963); *see also Augustine v. Dept. of Veterans Affairs,* 429 F.3d 1334, 1339-40 (Fed. Cir. 2005) (state without authority to require attorney practicing before a federal agency to first obtain a state bar license).

The Florida Bar responds that it is unlawful for Gould, who is not licensed to practice law in Florida, to engage in a general "federal administrative practice" in Florida and that, under *Central Hudson,* the Florida Bar is entitled to regulate an advertisement for those services because the advertisement concerns unlawful activity. The words "federal administrative law" apply to a broad range of legal issues, and are

not limited to the representation of persons before federal agencies. Issues of federal administrative law arise in state and federal courts, as well as before federal agencies.

We again agree with the Florida Bar. The proposed advertisement for a "practice limited to federal administrative law" is misleading and relates, at least in part, to unlawful conduct. Gould's proposed speech is not protected by the First Amendment and is subject to regulation by the Florida Bar.

The summary judgment in favor of the Florida Bar is

AFFIRMED.